

REMARKS

This is a full and timely response to the Office Action mailed June 23, 2008, submitted concurrently with a one month extension of time to extend the due date for response to October 23, 2008.

By this Amendment, claim 1 has been amended to incorporate the subject matter of claims 2 and 5, and claims 6-9 and 11 have been amended to change their dependency to claim 1 in view thereof. Thus, in view of the amendments to claim 1, claim 2 and 5 have been canceled without prejudice or disclaimer to their underlying subject matter. Thus, claims 1, 3, 4 and 6-17 are currently pending in this application. Support for the claim amendments can be readily found variously throughout the specification and the original claims.

In view of these amendments, Applicant believes that all pending claims are in condition for allowance. Reexamination and reconsideration in light of the above amendments and the following remarks is respectfully requested.

Rejections under 35 U.S.C. §103

Claims 1, 2 and 10 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jeffries et al. (U.S. Patent No. 5,221,050) in view of Coffee et al. (U.S. Patent No. 6,595,208 B1). Further, claims 3 and 4 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jeffries et al. (U.S. Patent No. 5,221,050) in view of Coffee et al. (U.S. Patent No. 6,595,208 B1), and further in view of Kelly (U.S. Patent No. 4,380,786). Still further, claims 5-9 and 11-13 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jeffries et al. (U.S. Patent No. 5,221,050) in view of Coffee et al. (U.S. Patent No. 6,595,208 B1), and further in view of Adams et al. (U.S. Patent No. 5,512,228). Lastly, claims 14-15 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jeffries et al. (U.S. Patent No. 5,221,050) in view of Coffee et al. (U.S. Patent No. 6,595,208 B1), and further in view of Adams et al. (U.S. Patent No. 5,512,228) and Urano et al. (U.S. Patent Publication No. 2003/0002995). Applicant respectfully traverses these rejections.

To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations, and provide some suggestion or motivation, either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Here, in this case, none of the cited references, either alone or in the combinations set forth in the action, teach or suggest all of the limitations of the claims with particular emphasis on the limitations "*a suction pump in immediate upstream relation with the reservoir for supplying the liquid composition from the reservoir, said pump being mechanically connected to said actuator to be driven thereby*", "*wherein said reservoir is coupled to said dispensing unit and is cooperative therewith to define said removable cartridge*", "*wherein said dispensing unit comprises a plug to be inserted into a fitment*", "*wherein said reservoir comprises a mouth for connecting with said fitment*", and "*wherein said reservoir and dispensing unit being in fluid communication by attaching said plug with said fitment, and said fitment with said mouth*".

The Examiner states that original claims 1, 2 and 10 are obvious over Jeffries et al. (U.S. Patent No. 5,221,050) in view of Coffee et al. (U.S. Patent No. 6,595,208 B1). In formulating the rejection, the Examiner recognizes that Jeffries et al. does not disclose (1) a dispensing unit comprising suction pump in immediately downstream relation with the reservoir for supplying the liquid composition from the reservoir, and (2) the pump being mechanically connected to an actuator activated by a power source.

However, the Examiner has attempted to cure these deficiencies of Jeffries et al. mentioned above by citing the teachings of Coffee et al. However, Applicant strongly disagrees with the Examiner's arguments in this regard since Applicant believes that one skilled in the art would not be motivated to combine Jeffries et al. and Coffee et al., and that even if the references were combined, such a combination would still not achieve the invention of the claims as now amended.

Jeffries et al. relates to an electrostatic sprayer for dispensing liquid. As described in column 4, line 60, to column 5, line 3, of Jeffries et al., the sprayer is configured to provide a flow of liquid over a certain length of time. In contrast, Coffee et al. relates to a device suitable for delivering comminuted material to the respiratory system with the aid of airflow. As depicted in FIG. 3b of Coffee et al. showing a mass of such comminuted material, and from the specific delivery system in FIG. 6a and FIG. 7 of Coffee et al. suitable for providing a dosage of spray per action of the lever or latch, one skilled in the art understands and can clearly see that the device of

Coffee et al. is not for a continuous spray of liquid. There may be very general statements in Coffee et al. that a piezoelectric diaphragm pump coupled to an electrical control circuit may be used for providing a steady flow of liquid to electrohydrodynamic comminution means (see column 2, lines 56-58, of Coffee et al.). However, there is no specific mechanism or structure for such delivery system described in Coffee et al. The description of column 2, lines 56-58, in Coffee et al. alone would not motivate one skilled in the art to employ the device of Coffee et al. for the purposes of the claimed invention. Thus, although the devices of Jeffries et al. and Coffee et al. are both in the field of electrostatic devices, their purpose and method of delivery are quite distinct from each other. Hence, Applicant believes that there is no motivation for one skilled in the art to combine the elements of the device found in Jeffries et al. and Coffee et al.

Further, based on the Examiner's arguments in the Action, Applicant believes that the Examiner is using hindsight to randomly select and combine the elements of the devices of Jeffries et al. and Coffee et al. In other words, the Examiner is merely listing the elements of the present invention and locating such elements in Jeffries et al. and Coffee et al. without any regard as to whether one skilled in the art would be motivated to combine the elements in Jeffries et al. with the elements in Coffee et al. Under U.S. practice, the Examiner is not permitted to pick and choose which teachings of Coffee et al. to combine with Jeffries et al. Such a construction is improper since the Examiner is relying on Applicant's own disclosure to establish his case of obviousness. Thus, the Examiner's conclusion of obviousness in this case is based on improper hindsight reasoning, Applicant respectfully submits that this rejection cannot be sustained and should be withdrawn.

Moreover, even if the features of Jeffries et al. and Coffee et al. were somehow conveniently combined, Applicant believes that such a combination still does not arrive at the present invention. First, the reservoir of Jeffries et al. for containing liquid is a flexible sachet, which is to be applied physical positive pressure. The sachet of Jeffries et al. may have a "nozzle" to plug into the device. However, such nozzle is not the point of dispense, as required in the present invention. There is no actuator in the device of Jeffries et al., as the supplying means is based on manual action. In addition, there is no teaching or suggestion in Coffee et al. to connect the point of dispense with the reservoir. Further, there is no teaching or suggestion in Coffee et al. regarding a

specific mechanism for providing an actuator to mechanically move the pump, wherein the actuator is activated by a power source. Hence, even if one skilled in the art were to employ the actuating system of Coffee et al. and apply it to Jeffries et al., one skilled in the art would employ the system of either FIG. 6a and FIG. 7 of Coffee et al. rather than a system that is not even adequately described. It should be noted that the system of FIG. 6a and FIG. 7 in Coffee et al. relates to an actuating system for delivering the liquid to the point of dispense based on manual action.

Applicant also wishes to note that to further distinguish the present claims from that which is disclosed in Jeffries et al. and Coffee et al., claim 1 has been amended to comprise the following additional features:

- 1. the reservoir is coupled to the dispensing unit and cooperative therewith to define a removable cartridge; and*
- 2. the dispensing unit and reservoir are in fluid communication by attaching a dispensing unit plug and reservoir mouth through fitment.*

Since none of these features are disclosed or suggested in Jeffries et al. and Coffee et al., Applicant submit a *prima facie* case of obviousness cannot be established based on the teachings and suggestion of these cited references.

In addition, with regard to original claim 10 of the present invention, Applicants wishes to clarify the limitations of the claim, and how such limitations are distinguishable from the teachings in Jeffries et al.

The limitation in claim 10 "*said reservoir is shaped to have a planar configuration of a general segment of circle defined between a chord and a circumference of an approximate circle*" can be interpreted to mean that the reservoir has a planar shape as best exemplified in FIG. 27 of the drawings. Further, claim 10 also requires that said mouth be "*disposed at a center of said chord*". In reviewing Jeffries et al., it is clear that such limitations are not at all taught or suggested in Jeffries et al. The circular sachets of Jeffries et al. do not have a chord and are complete circles. Moreover, since the sachet of Jeffries et al. does not have a chord, the mouth cannot be disposed at the center of the chord.

Thus, for these reasons, withdrawal of the rejections is respectfully requested.

Further, since the combination of Jeffries et al. and Coffee et al. do not teach or suggest the present invention, Applicant believes that further combinations of Jeffries et al. and Coffee et al., with any other reference against the remaining dependent claims cannot be sustained and should be withdrawn. Nevertheless, Applicant wishes to respond and correct some of the technical arguments and conclusion set forth by the Examiner with regard to the rejections.

With regard to the rejection of claims 3 and 4 under 35 U.S.C. §103(a) as allegedly being obvious over Jeffries et al. and Coffee et al. in view of Kelly et al. (U.S. Patent No. 4,380,786), Applicant believes that the invention of these claims is also not obvious from the combined teachings of these cited references.

The only specific teaching of the gear in Kelly et al. is found in FIG. 5 and described in column 11, first paragraph, of the reference. In the noted paragraph, it is stated that "*A rack gear 289 is joined to tigger 266 and meshes with gear 287 such that movement of tigger 266 causes activation of generator means 284. The generator means 284 functions as the high voltage source 40 of the device 10 . . .*". In other words, the gear in Kelly et al. is for mechanically delivering manually driven action to the generator means. In contrast, the gear of the present invention is moved by the action of the actuator, and the rotation of the gear realizes a suction pump for delivering the liquid. Thus, the function of the gear in Kelly is completely different from that of the present invention.

Thus, for also this reason, withdrawal of the rejection is respectfully requested.

With regard to the rejection of claims 5-9 and 11-13 under 35 U.S.C. §103(a) as allegedly being obvious over Jeffries et al. and Coffee et al. in view of Adams et al. (U.S. Patent No. 5,512,228), Applicant believes that the invention of these claims is also not obvious from the combined teachings of these cited references since Applicant believes that the Examiner is citing non-analogous art. The spout portion of the package of Adams et al. is not for delivering liquid, much less for connecting to a further delivery system, which is in fluid communication with the package. Thus, for also this reason, withdrawal of the rejection is respectfully requested.

With regard to the rejection of claims 14 and 15 under 35 U.S.C. §103(a) as allegedly being obvious over Jeffries et al. and Coffee et al. in view of Adams et al. (U.S. Patent No. 5,512,228) and further in view of Urano et al. (U.S. Patent Publication No. 2003/0002995), Applicant believes that the invention of these claims is also not obvious from the combined teachings of these cited references.

Urano et al. discloses a valve structure using a diaphragm. The diaphragm 12 does not have a vent, which constitutes a path of delivering liquid. In contrast, the valve membrane recited in claim 14 has a plurality of vents through which the liquid is delivered as the valve membrane is deformed by being pressed by the plug. Thus, claim 14 and its dependent claim 15 are clearly distinguishable from the teachings of Urano et al.

Thus, for also this reason, withdrawal of the rejection is respectfully requested.

In addition to the above, Applicant also notes that claims 3, 4 and 6-17 depend directly or indirectly from amended claim 1 and includes all of the features of amended claim 1. Thus, it is respectfully submitted that claims 3, 4 and 6-17 are allowable at least for the reasons claim 1 is allowable as well as for the features they recite (which have already been discussed above).

Further, Applicant asserts that there are also reasons other than those set forth above why the pending claims are patentable. Applicant hereby reserves the right to submit those other reasons and to argue for the patentability of claims not explicitly addressed herein in future papers.

Obviousness-Type Double Patenting Rejection


Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over the claims of copending U.S. Patent Application Nos. 10/588,437, 10/588,758, and 10/588,779. Applicant respectfully traverses these rejections. However, in the interest of expediting the prosecution of the present application, Applicant has submitted herewith terminal disclaimers for U.S. Patent Application Nos. 10/588,437, 10/588,758, and 10/588,779 in accordance with U.S. practice. Thus, withdrawal of these rejections is respectfully requested.

CONCLUSION

For the foregoing reasons, all the claims now pending in the present application are believed to be clearly patentable over the outstanding rejections. Accordingly, favorable reconsideration of the claims in light of the above remarks is courteously solicited. If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

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Respectfully submitted,

By:  _____

Lee Cheng

Registration No.: 40,949

CHENG LAW GROUP PLLC

1100 17th Street, N.W.

Suite 503

Washington, DC 20036

(202) 530-1280

Attorney for Applicant

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